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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In re Applications of	)	MM Docket No. 97-128
	)	
Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership	)	File No. BRCT-881202KF
For Renewal of License of Station WHCT-TV, Hartford, Connecticut	)	
and	)	
Shurberg Broadcasting of Hartford	)	File No. BPCT-831202KF
For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	

To: The Honorable John M. Frysiak
Administrative Law Judge

CONSOLIDATED REPLY OF RICHARD P. RAMIREZ TO COMMENTS OF MASS MEDIA BUREAU AND OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD

Respectfully submitted,

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Dated: August 15, 1997

SUMMARY

The relief requested in Richard P. Ramirez's Petition for Emergency Relief and Stay of Proceedings must be granted. The facts in this case establish that the Presiding Judge should stay this proceeding, delete the misrepresentation issue, and then certify the proceeding to the Commission for its reconsideration of the applicability of the Second Thursday doctrine. It is undisputed that Ramirez's representations to the Commission regarding his 21% ownership of Astroline Communications Company Limited Partnership ("ACCLP") always matched the 21% interest reflected in the limited partnership agreement of ACCLP -- the document that governed his interest level. Moreover, the U.S. Bankruptcy Court, District of Connecticut, confirmed that Ramirez held a 21% ownership interest in ACCLP. Furthermore, the U.S. Bankruptcy Court, District of Connecticut concluded that Ramirez fully controlled ACCLP based on the same factors that the Commission would review if it were to investigate a control issue. In short, the instant proceeding, if permitted to go forward, would needlessly re-litigate matters that have already been addressed.

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CONSOLIDATED REPLY OF RICHARD P. RAMIREZ TO COMMENTS OF MASS MEDIA BUREAU AND OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD

Richard P. Ramirez ("Ramirez"), by his attorneys, hereby submits his Consolidated Reply to the Comments filed by the Mass Media Bureau (the "Bureau") concerning Ramirez's Petition for Emergency Relief and Stay of Proceedings (the "Petition") and to the Opposition filed by Shurberg Broadcasting of Hartford ("Shurberg") to the Petition.[1/] As demonstrated

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1/ Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership (the "Trustee"), the current licensee of Station WHCT-TV, Hartford,

(continued...)

herein, Ramirez respectfully submits that there are unique and compelling reasons for the grant of his Petition.

I. RAMIREZ'S PETITION SHOULD BE CONSIDERED BY THE PRESIDING JUDGE

1. As the Bureau correctly observes, Ramirez has expressly requested the Presiding Judge to delete the misrepresentation issue. The Bureau contends that motions to delete must be filed within 15 days after Federal Register publication which in this case occurred on June 9, 1997. Bureau Comments at 4. Thus, it is the Bureau's position that Ramirez's petition was due on June 24, 1997.

2. Since Ramirez was not granted leave to intervene until Friday June 20, 1997,[2/] under the Bureau's theory, assuming, *arguendo*, that Ramirez had notice that intervention had been granted on June 20th, he would have had only two business days in which to prepare and file his petition. Perhaps the Bureau's position is that Ramirez should have prepared his petition prior to having been granted intervention status. However, there is no Commission requirement to that effect, and it would be extremely unfair and burdensome to require intervenors to prepare pleadings in anticipation of being granted leave to participate when such participation could be denied. Moreover, the Bureau's argument is particularly unfair because Shurberg had urged the Judge to deny Ramirez's request for intervention. Under these circumstances, there is good

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[1/] (...continued)
Connecticut and Two If By Sea Broadcasting Corporation ("TIBS"), the proposed assignee of Station WHCT-TV, have both filed Comments in support of Ramirez's petition.

[2/] In fact, Ramirez did not learn that intervention had been granted until June 24, 1997.

cause for consideration of Ramirez's Petition for Emergency Relief and Stay of Proceedings.[3/]

II. THIS CASE FALLS SQUARELY WITHIN COMMISSION CASE PRECEDENT PERMITTING THE DELETION OF AN ISSUE

3. The Bureau argues that "an issue will not be deleted absent a compelling showing of unusual circumstances such as where the Commission overlooked or misconstrued pertinent information before it at the time of designation." Bureau Comments at 3-4 (citing Post-Newsweek Stations, Florida, Inc., 52 F.C.C. 2d 883, 885 (Rev. Bd. 1975)). This case presents those very circumstances. The HDO only speaks of Shurberg's "allegations" and completely overlooks the fact that those allegations were extensively litigated.[4/] Now, the Bureau has exacerbated this error by filing Comments against Ramirez's Petition despite admitting to not being "conversant with the bankruptcy trial record." See Mass Media Bureau's Comments on Petition for Modification of Procedural Dates at 2. Ramirez has met the test of demonstrating "compelling showing of unusual circumstances." Indeed, it is hard to imagine a more unusual situation. The Commission traditionally respects the judgments of other courts and eschews attempts to relitigate allegations that have already been adjudicated.[5/] See, e.g., Town of

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[3/] Shurberg erroneously treats Ramirez's Petition as a petition for reconsideration of the Hearing Designation Order ("HDO") and claims that such petitions will not normally be entertained and Ramirez should have acted earlier. Shurberg refers to a letter addressed to Shurberg and TIBS, dated January 30, 1997. The letter was neither addressed to Ramirez nor served on him. Ramirez had no notice of this proceeding until the release of the HDO and he timely sought leave to intervene. In any event, Shurberg has failed to address the fact that the Presiding Judge does have the authority to delete an issue.

[4/] Although copies of the bankruptcy court decision may have been provided to the Commission as an attachment to a pleading shortly before designation, there is no evidence in the HDO that the Commission accounted for the decision in designating the instant matters for hearing.

[5/] Shurberg complains that it was not a party to the adversary bankruptcy proceeding. However, Shurberg has claimed to be a "creditor" of the bankrupt estate and, as such, was

(continued...)

Deerfield, New York, 992 F.2d 420 (1993).

III. THE ISSUE IN THIS CASE HAS ALREADY BEEN FULLY LITIGATED BEFORE AND DECIDED BY THE CIVIL COURTS

4. In its HDO, the Commission did not address the fact that the civil courts have already fully examined the same allegations that Shurberg raised at the FCC. After considering all the evidence, which included extensive depositions and witness testimony as well as over 300 trial exhibits dealing with both the ownership of Astroline Communications Company Limited Partnership ("ACCLP") and its control by Ramirez, the U.S. Bankruptcy Court for the District of Connecticut concluded that the activities of Astroline Company, the limited partner of ACCLP, did not constitute the exercise of the powers of a general partner. Hoffman v. WHCT Management, Inc. (In re Astroline Communications Co. Ltd. Partnership), 188 B.R. 98 (Bankr.D.Conn. 1995) ("Hoffman").[6/] The court found that only Ramirez acted as a general partner and that Ramirez was in full control of the management and operations of ACCLP. Hoffman at 105-6. In short, the court stated that it would have to "engage in conjecture and surmise to find any control of [the] day-to-day operation of the Channel 18 television station" by Astroline Company or its principals and that as managing general partner, Ramirez exercised fully his powers as such. Id.

5. The Bureau and Shurberg attempt to argue that the focus of the bankruptcy proceeding was limited in nature. That is simply not the case. First, the allegations that Shurberg presented to the Commission were the same allegations as the Trustee advanced in the court litigation. Second, there was extensive discovery in the bankruptcy court proceeding

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5/ (...continued)
undoubtedly aware of that proceeding.

6/ See Attachment A to Ramirez's Petition.

including the production of numerous documents and lengthy depositions. Third, the exhibits in the bankruptcy proceeding extensively addressed all the matters of possible interest to the Commission. The ACCLP limited partnership agreements, the FCC ownership reports, the ACCLP tax returns, the memos from ACCLP's accountants and numerous other exhibits demonstrating Ramirez's ownership and control of ACCLP were all introduced into evidence in the bankruptcy court proceeding and were the subjects of argument before the court. It is wholly inaccurate to argue that these matters were not litigated. Significantly, the Bureau does not dispute that the bankruptcy court proceeding resolved the issue of who controlled ACCLP for purposes of the Commission's minority distress sale policy. Bureau Comments at 5-6.

A. Relevant Evidence Presented and Reviewed in the Bankruptcy Proceeding Establishes That Ramirez Always Maintained a 21% Ownership Interest in ACCLP.

6. Both the Bureau and Shurberg argue that the bankruptcy court made no findings regarding Ramirez's ownership interest in ACCLP and that, if anything, the federal income tax filings submitted in that proceeding counter Ramirez's contention that he always maintained a 21% ownership interest in ACCLP. Shurberg's Opposition at 11-16; Bureau Comments at 5-6. A review of the bankruptcy proceeding, however, reveals that there is no reason to question Ramirez's consistent 21% ownership interest in ACCLP. Ramirez always maintained a 21% ownership interest in ACCLP. This issue was argued before the bankruptcy court, and no federal income tax filings ever affected this interest percentage.

7. Contrary to Shurberg's speculation, the bankruptcy court was presented with substantial evidence regarding Ramirez's ownership of ACCLP. Even the Bureau has recognized this fact. Bureau Comments at 6. Proposed findings of fact discussed Ramirez's partnership interest. See, e.g., Defendants' Proposed Findings of Fact at 2. (Attach. 1 hereto).

Indeed, the Trustee specifically argued that, because of the income tax allocations, "Ramirez no longer owned 21% of the partnership's equity." Plaintiff's Proposed Findings of Fact and Conclusions of Law at 12 (Attach. 2 hereto). Tax partners from Arthur Andersen were examined on the stand at length regarding the federal income tax filings and their profit and loss allocations. See, e.g., Volume 6 TR6-83--6-88. (Attach. 3 hereto). An affidavit from an Arthur Andersen partner explained the formation of and reasoning behind the income tax profit and loss allocations. See Affidavit of Kent W. Davenport (Attach. 4 hereto). Documentation of Ramirez's partnership interest, such as the ACCLP Communications Company Limited Partnership Agreement and Certificate ("ACCLP Limited Partnership Agreement") and federal income tax filings were submitted to the bankruptcy court. See Joint Exhibit List and Stipulation at 2-3.

8. Ultimately, after consideration of this wealth of information, the bankruptcy court found that "[a]t [ACCLP's] inception, Ramirez held a 21 percent ownership interest. . . ." 188 B.R. 98, 101 (Bankr.D.Conn. 1995). This finding of fact was never qualified or altered.

9. The federal income tax filings that concern the Bureau and Shurberg have no bearing on Ramirez's ownership interest in ACCLP. Quite simply, the legal document that governed Ramirez's ownership interest in ACCLP was the ACCLP Limited Partnership Agreement. The only means by which Ramirez's 21% interest in ACCLP could have been altered would be through an amendment to the ACCLP Limited Partnership Agreement. But, as reflected in both the original and amended versions of this document, which were submitted to and examined by the bankruptcy court, Ramirez consistently held a 21% ownership interest in ACCLP. This ownership level fully complied with the Commission's minority ownership policies and comports with the representations made to the Commission.

10. The simple, relevant facts are that 1) the Commission was consistently informed that Ramirez held a 21% ownership interest in ACCLP and 2) the legal document that controlled Ramirez's ownership of ACCLP (the ACCLP Limited Partnership Agreement) consistently reflected that Ramirez held a 21% ownership interest in ACCLP. For the Commission's purposes, nothing else matters. Hypothetically, Ramirez could have told the Internal Revenue Service he owned 100% of ACCLP but, as this would have no legal effect upon his true ownership interest, it would be irrelevant in terms of whether Ramirez had misled the Commission or the courts.[7/] The issue here concerns what Ramirez told the Commission and whether it was true. No one disputes that the Commission was informed that Ramirez owned 21% of ACCLP and no one disputes that the Limited Partnership Agreement ever reflected anything else. Accordingly, Ramirez's ownership interest in ACCLP is not at issue.

B. The Bankruptcy Proceeding, Which Found That Ramirez Maintained Full Control of WHCT-TV, Conclusively Resolves Any Question Regarding Control of ACCLP.

11. Before concluding that Ramirez maintained full control of WHCT-TV, the bankruptcy court reviewed extensive evidence regarding the activities of both Ramirez and Astroline Company's principals. Necessarily, such a conclusion required a broad inquiry which explored a wide variety of topics such as the broadcast experience, station activities, and business interests of both Ramirez and Astroline Company's principals.

12. Despite the broad scope of this inquiry, Shurberg has argued that the bankruptcy court's decision does not address the Commission's rules and policies or ACCLP's compliance

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[7/] The profit and loss allocations in Ramirez's federal income tax filings which have confused the Bureau and Shurberg into arguing for the need of an ownership misrepresentation issue in the HDO have been extensively explained in the bankruptcy court. See, e.g., Attachments 2-4 hereto. Regardless, the Commission is not the proper forum to investigate federal income tax reporting especially, as noted herein, when those income tax filings have no legal effect upon the issue before the Commission.

with those rules or policies because the question before the court arose under the Massachusetts Limited Partnership Act (the "MLPA") and the Bankruptcy Code. Shurberg's Opposition at 3 n.4, 6. However, as pointed out in Ramirez's Petition, the Commission's standards for attributing broadcast interests to limited partnerships at the time ACCLP was formed, as well as at the time the Commission approved ACCLP as a qualified minority-controlled enterprise, were the same as the MLPA.[8/] Mass. Gen. L. ch.109, as revised in 1982. Ramirez's Petition at 14-15. Although the Commission subsequently revised its Attribution Rules to establish new criteria for determining compliance of limited partnerships with the Commission's minority policies, see Multiple and Cross-Ownership of AM, FM, TV and CATV Systems, 55 R.R.2d 604 (released June 24, 1985), the new guidelines did not become effective until July 31, 1985, after ACCLP had been formed and the assignment of WHCT-TV to ACCLP had been granted and consummated.[9/]

[8/] The Report and Order by which the Commission adopted the standard governing attribution for limited partnerships stated that limited partners would be exempt from attribution where the limited partnership conforms in all significant respects to the provisions of the [Revised] Uniform Limited Partnership Act (the "RULPA"). Attribution of Ownership Interests, 97 F.C.C.2d 997, 1022-23 (released April 30, 1984). Hence, compliance with the MLPA, which was based on the RULPA, is compliance with the Commission's standards. Minority Ownership in Broadcasting, 92 F.C.C. 2d 849, 854 (1982), cited by Shurberg, simply observed that limited partnerships are creatures of statute, a determination the Commission reached in 1984 when it endorsed the RULPA standard.

[9/] Even if, as Shurberg argues, Shurberg's Opposition at 17-18, the original ACCLP assignment application remained pending through June 1990 by virtue of the fact that Shurberg's appeal of the grant of the application remained pending until that time, the Commission determines the appropriate standard with respect to limited partnerships based on the date of partnership formation rather than on the finality date of any application. See Religious Broadcasting Network et al., 3 FCC Rcd 4085 (Rev. Bd. 1988) ("Religious Broadcasting"); Chester Associates, 2 FCC Rcd 2029 (Rev. Bd. 1987) ("Chester"); Independent Masters, Ltd., 104 F.C.C.2d 178 (Rev. Bd. 1986) ("Independent Masters"). Hence, because ACCLP was formed in 1984, it would be subject to the

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13. The Review Board has held that the Commission's 1985 Ownership Attribution reconsideration standards should not be applied retroactively because such application unfairly victimizes limited partnerships whose limited partnership agreements were executed prior to the effectiveness of the 1985 limited partnership insulation standards.[10/] See Religious Broadcasting at paras. 30-31. Specifically, in Independent Masters, the Review Board held that, based on commonplace principles of traditional equity and law, it "would not apply either literally or stringently some of the more recent 'limited' partnership requirements of *Attribution of Ownership* . . . to applicant entities created *prior* to the adoption of that revised ownership policy statement," Independent Masters at 188 (*emphasis in original*); see also Chester at 2030. This restraint from retroactively applying new partnership requirements is particularly necessary when the entity is not a mere applicant that can more easily alter its structure, but an operating entity that has relied on previous Commission policies. Accordingly, the new guidelines did not apply to ACCLP, and the operations of ACCLP are properly evaluated based upon its compliance with MLPA.

14. The Connecticut bankruptcy court has already determined that ACCLP and its limited partners complied with the MLPA. The court also found that neither Astroline Company

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9/ (...continued)
Commission's earlier standard of compliance with the RULPA, and not the stricter insulation standards that became effective in 1985, regardless of when the assignment application was either granted or consummated.

10/ Shurberg cites two cases to support its claim that the more stringent 1985 insulation standards are the appropriate criteria by which to determine compliance of limited partnerships created before the adoption of the newer standards. However, neither Family Media, Inc., 102 F.C.C.2d 752 (Rev. Bd. 1985) nor Atlantic City Community Broadcasting, 8 FCC Rcd 4520 (1993), deals with the issue of whether the 1985 insulation standards apply retroactively. Moreover, they deal with paper proposals - not operating limited partnerships.

nor its principals exercised any control of the day-to-day operations of the station. Instead, the Court found that Ramirez fully exercised his powers as the managing general partner. Hoffman at 105-06. As a result, it has already been determined that ACCLP complied with the Commission's insulation rules. While the court did not specifically address the issue of misrepresentation, that issue is moot since ACCLP was in fact in full compliance with the Commission's rules. Consequently, the very matters that would be examined in the designated hearing have already been fully litigated before the civil courts and decided in ACCLP's favor, and it would be counterproductive and contrary to the public interest to re-litigate those matters here.

15. The cases cited by Shurberg to show that the Commission will look beyond compliance with partnership laws are misleading and inappropriate because the facts of those cases are markedly different from the facts of the instant case. To begin with, the cases cited by Shurberg are not relevant to the instant situation because they concern the evaluation of hypothetical proposals in comparative hearings. Here, ACCLP's compliance has been determined based upon its actual performance and operations. Additionally, the cases were all decided long after the ACCLP application was filed and granted based on the 1984 attribution standards.

16. Furthermore, the cases cited by Shurberg, in which general partners were found to not have exclusive control, are inapplicable to the case at hand. For example, in those cases, it was found that the partnership agreements vested unacceptable levels of control in the supposed limited partner, see Evergreen Broadcasting Company, 6 FCC Rcd 5599, 5602 (1991) ("Evergreen"), the principals departed from the terms of the partnership agreements, see Evergreen at 5602, the supposed limited partners prosecuted the partnership's FCC applications,

Id., the general partners had no prior broadcast experience, see Mableton Broadcasting Company, Inc., 5 FCC Rcd 6314, 6316 (Rev. Bd. 1990) ("Mableton"); Metroplex Communications, Inc., 5 FCC Rcd 5610, 6212 (1990), the general partners had no knowledge of the functions of station and general managers, see Mableton at 6316, nor could they be relied upon to commit to working full-time at the station, see Moore Broadcast Industries, Inc., 2 FCC Rcd 2754, 2766 (Frysiak, ALJ 1987).

17. Here, in stark contrast to those authorities cited by Shurberg, the ACCLP Limited Partnership Agreement vested only Ramirez with control over operational matters and only Ramirez exercised such control. In addition, Ramirez had extensive experience in operating broadcast stations, while none of Astroline Company's principals had any such experience. Moreover, Ramirez worked full-time for the station, while Astroline Company's principals managed numerous unrelated businesses, including oil and financial enterprises, as their full-time occupations. Indeed, Mr. Ramirez moved to Hartford, Connecticut in 1984, and lived there until 1989, while none of Astroline Company's principals resided anywhere near the station. In short, Ramirez prosecuted ACCLP's FCC applications, developed the station's business and operating plans, hired and supervised station employees, including the station and business managers, dealt with program suppliers, selected programming, and made all decisions concerning the acquisition and renovations of the station's studio as well as the acquisition of equipment necessary to operate the station. As a result, Shurberg's reliance on each of the cited cases to discredit the structure of ACCLP is entirely misplaced.[11/]

[11/] Shurberg's reliance on Saltaire Communications, Inc., 8 FCC Rcd 6284 (1993) ("Saltaire") is likewise entirely misplaced. Apart from the critical fact that the case postdated ACCLP's formation, approval and grant by 9 years, Saltaire involved an applicant, WHSL Corporation, which had three "participating noteholders" who had no

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18. The bankruptcy court fully considered evidence regarding all of the facts set forth in paragraph 17, above. Although the court did not cite to any Commission authority in its decision, *per se*, it did conduct an extremely broad inquiry, looking beyond the boundaries of the written partnership agreement, considering the same types of evidence that were addressed in each of the cited cases. Based upon this evidence, the court concluded that Ramirez fully controlled the operations of the station. Hoffman at 105-6. Hence, Shurberg's contention that the matters before the Commission have not been resolved because the bankruptcy court did not specifically address Commission authority is entirely without merit. The bankruptcy court's decision conclusively resolved the issue of control of ACCLP.

IV. DELETION OF THE ISSUE IS REQUIRED BECAUSE THERE IS NO EVIDENCE OF ANY INTENT TO DECEIVE

19. The Commission has emphasized that the specification of a misrepresentation issue requires a showing of "clear, precise and indubitable" evidence of misrepresentation. Riverside Broadcasting Co., 56 R.R.2d 618, 620 (1984) (citing Overmeyer Communications Co., 56 F.C.C.2d 918, 925 (1974), quoting Mammoth Oil v. United States, 275 U.S. 13, 52 (1972)); see also Scott & Davis Enterprises, Inc., 88 F.C.C.2d 1090, 1099 (Rev. Bd. 1982)

11/ (...continued)
disclosed ownership in the corporation but whose notes were intended as a mechanism to "[r]etain the same equity split" the noteholders initially intended to have as stockholders. Saltaire Communications, Inc., 7 FCC Rcd 5164 (Rev. Bd. 1992). The Board stated: "Although creditor relationships do not ordinarily intimate control of an applicant . . . the control retained here by the noteholders in the guise of a creditor relationship is inconsistent with the exclusive managerial control the Commission expects of active owners claiming integration credit." Id. at 5167. Thus, the Review Board concluded that control of WHSL was fatally uncertain. In contrast, this case does not involve non-owners; it involves an operating entity and definitive findings by the bankruptcy court, affirmed by the Second Circuit Court of Appeals, that Ramirez exercised day-to-day managerial control of ACCLP. Moreover, through Spring 1987, the initial capital investments in ACCLP, totaling over $20 million in equity, were equity contributions, not loans.

("Misrepresentation and lack of candor charges are very grave matters. They ought not be bandied about. The duty to come forward with a *prima facie* showing of deception is particularly strong where a misrepresentation issue is sought.") (*emphasis in original*). Here, there is no evidence that ACCLP intended to deceive the Commission. In Weigel Broadcasting Co., 62 R.R.2d 824 (1987), the Commission refused to designate a misrepresentation issue against a television renewal applicant, noting that the absence of any affirmative evidence of an intent to deceive foreclosed the need for a hearing. Deletion of the misrepresentation issue here is thus warranted for this reason as well.

V. IN LIGHT OF MOBILEMEDIA, THE PRESIDING JUDGE SHOULD CERTIFY TO THE COMMISSION THE ARBITRARY AND CAPRICIOUS DECISION NOT TO INVOKE THE SECOND THURSDAY DOCTRINE.

20. Finally, neither the Bureau nor Shurberg forwarded any plausible rationale that could reconcile the Commission's decision not to invoke its Second Thursday doctrine in this case in light of the Bureau's recent action in MobileMedia Corporation, FCC 97-197 (released June 6, 1997) ("MobileMedia"). Essentially, the Bureau and Shurberg ignore MobileMedia by claiming the facts are distinguishable and arguing that the Commission fully considered the issue.[12/] Bureau Comments at 6-7; Shurberg's Opposition at 20.

21. The facts in MobileMedia do indeed differ from those in this case; as set forth in Ramirez's Petition, the *admitted* misrepresentations and abuse of the Commission's policies

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12/ The Bureau contends that the Presiding Judge lacks the authority to review the Commission determination not to invoke the Second Thursday doctrine, citing Atlantic Broadcasting Company (WUST) et al., 5 FCC Rcd 2d 717, 720 (1966). However, because the Commission erroneously overlooked the bankruptcy proceeding entirely, its analysis of the applicability of the Second Thursday doctrine was fatally flawed. Under these circumstances, the Presiding Judge should certify this proceeding to the Commission under Atlantic, supra.

were dramatically worse in MobileMedia than this case which involves mere *allegations* which have been disproven in court proceedings. Inexplicably, the Commission permitted Second Thursday relief in MobileMedia and not here.

VI. CONCLUSION

For the reasons set forth above, the Comments filed by the Mass Media Bureau and the Opposition filed by Shurberg Broadcasting of Hartford have failed to counter the compelling arguments advanced by Ramirez justifying deletion of the misrepresentation issue. Accordingly, in light of the bankruptcy court decision which found in favor of Mr. Ramirez and ACCLP on all the allegations which led to the hearing designation order, the Presiding Judge should delete the misrepresentation issue and certify this proceeding to the Commission for its reconsideration of the applicability of the Second Thursday doctrine. Moreover, pending the Presiding Judge's review and action on Ramirez's Petition for Emergency Relief and Stay of Proceedings, the Presiding Judge should issue a stay as no party has opposed this request.

Respectfully submitted,

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Dated: August 15, 1997

ATTACHMENT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	:	CASE NO. 2-88-01124
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP,	:	CHAPTER 7
Debtor.	:	
MARTIN W. HOFFMAN, Trustee	:	
Plaintiff,	:	
- against -	:	
RICHARD P. RAMIREZ; WHCT MANAGEMENT, INC., THOMAS A. HART, JR.; ASTROLINE COMPANY; ASTROLINE COMPANY, INC.; HERBERT A. SOSTEK; FRED J. BOLING, JR.; RICHARD H. GIBBS; RANDALL L. GIBBS; CAROLYN H. GIBBS, RICHARD GOLDSTEIN, EDWARD A. SAXE and ALAN TOBIN, AS CO-EXECUTORS OF THE ESTATE OF JOEL A. GIBBS; ROBERT ROSE and MARTHA GIBBS ROSE,	:	Adv. Proc. No. 93-2220 (RLK)
Defendants.	:	JULY 14, 1995

DEFENDANTS' PROPOSED FINDINGS OF FACT

Defendants, Astroline Company, Astroline Company, Inc., Fred J. Boling, Jr., Richard H. Gibbs and Herbert A. Sostek, submit the following proposed findings of fact.

1. Astroline Communications Company Limited Partnership ("Debtor") was a Massachusetts limited partnership which was

formed on May 29, 1984. At the time of formation, the general partners of the Debtor were Richard P. Ramirez and WHCT Management, Inc. ("WHCT"). Mr. Ramirez owned a 21% equity interest in the Debtor. WHCT owned a 9% equity interest in the Debtor. The sole limited partner of the Debtor was Astroline Company, which owned a 70% equity interest in the Debtor. Exhibit 165.

2. Subsequent to its formation, Thomas A. Hart, Jr. was at various times a general partner, and Martha Rose, Robert Rose, Thelma N. Gibbs, Terry Planell, Danielle Webb and Don O'Brien were at various times limited partners of the Debtor. However, during the entire time period of the Debtor's existence, the general partnership interest of Mr. Ramirez remained at 21%, and the remaining collective general partnership interest of all other general partners remained at 9%. Accordingly, Mr. Ramirez at all times owned 70% of the general partnership interest in the Debtor. Exhibit 165, p.1; Transcript of April 26 (hereinafter "4/26"), p. 3-210.

3. WHCT was a corporate general partner of the Debtor. Exhibit 165. One purpose of WHCT was to create a vehicle to permit minorities who were brought into key management positions in the Debtor to own a share of the Debtor. 4/20, p. 2-109. An additional purpose of WHCT was to allow for the survival of the Debtor in the event of the incapacitation or death of the

ATTACHMENT 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	CASE NO. 2-88-01124
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP,	CHAPTER 7
Debtor.	
MARTIN W. HOFFMAN, Trustee	
Plaintiff,	
vs.	
RICHARD P. RAMIREZ; WHCT MANAGEMENT, INC., THOMAS A. HART, JR.; ASTROLINE COMPANY; ASTROLINE COMPANY, INC.; HERBERT A. SOSTEK; FRED J. BOLING, JR.; RICHARD H. GIBBS; RANDALL L. GIBBS; CAROLYN H. GIBBS, RICHARD GOLDSTEIN, EDWARD A. SAXE AND ALAN TOBIN, AS CO-EXECUTORS OF THE ESTATE OF JOEL A. GIBBS; ROBERT ROSE and MARTHA GIBBS ROSE,	ADV. PROC. NO. 93-2220 (RLK)
Defendants.	JULY 14, 1995

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Martin W. Hoffman, Trustee of Astroline Communications Company Limited Partnership ("Trustee") submits these post-trial

Proposed Findings of Fact and Conclusions of Law. The central (and dispositive) factual issue at trial is whether the defendant Astroline Company exercised sufficient control over Astroline Communications Company Limited Partnership ("ACCLP" or the "Debtor"), such that it acted substantially the same as a general partner. As documented below, the evidence at trial demonstrated beyond question that Astroline Company exercised complete control over the Debtor's financial operations and cash and, in so doing, it, its general partners and its successor, Astroline Company, Inc., became liable under Section 723 of the Bankruptcy Code for the deficiency of property of the estate available to pay the claims of creditors.

PROPOSED FINDINGS OF FACT

1. ACCLP is a Massachusetts limited partnership that was formed on May 29, 1984, to "acquire, own and operate" a television station known as WHCT-TV, Channel 18 in Hartford, Connecticut (Trial Transcript, Vol. 3 at 71; Joint Exhibit 165). ("T. Vol. __ at __; Ex. ___").

T. Vol. 3 at 78-79); and the Astroline Company partners considered abandoning the venture. Instead, Astroline Company chose to continue to fund ACCLP's operations and capital needs itself, as it had done since ACCLP's inception. (T. Vol. 1 at 134-37; T. Vol. 3 at 81).

16. Consistent with its decision to fund the capital requirements itself, Astroline Company caused the terms of the ACCLP partnership agreement to be modified such that Astroline Company significantly increased its share of the equity and secured more of the valuable tax benefits for its partners. A further result of the amendment was that, notwithstanding the FCC minority preference guidelines, Ramirez no longer owned 21% of the partnership's equity. (T. Vol. 1 at 138-62; Ex. 9, 54). Rather than retaining 21% of the equity which he held under the initial partnership agreement, Ramirez was given the right only to receive 21% of all partnership distributions <u>after</u> Astroline Company had been repaid its equity contributions in full, with a return. (T. Vol. 1 at 162; Ex. 9). Ramirez's interest, which had been reflected as 21% on the 1984 ACCLP tax return, was shown to have

been reduced to below 1% on the 1985, 1986 and 1987 tax returns. (Ex. 10-13).

17. Boling testified at trial that Astroline Company created and administered a comprehensive "cash control system" to deal with the Debtor's funds. (T. Vol. 5 at 103-05). Sullivan was responsible for managing ACCLP's cash. The cash control system covered all receipts and disbursements of the Debtor from its inception until August 31, 1988, when Astroline Company decided to case investing in the Debtor. (T. Vol. 4 at 65; T. Vol. 5 at 16, 20, 126). One of Sullivan's principal purposes was to reduce interest expense to the Astroline Company partners who personally were borrowing money from a bank to invest in the Debtor through Astroline Company. Boling admitted that that particular feature of the cash control system was established for the personal benefit of the Astroline Company partners. (T. Vol. 5 at 105). The Debtor never borrowed any money until certain equity contributions were "reversed" and "reclassified" and had no responsibility for payment or reimbursement of interest expense incurred by the Astroline Company partners. (Ex. 24). There was